

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3174 OF 1999

1 Gurumaharaj Shikshan Prasarak Mandal,
Chousala, Taluka and District Beed.
Through its Secretary.

2 Guru Datta Kanya Prashala Chousala,
Taluka and District Beed.
Through its Headmaster.

...PETITIONERS

-VERSUS-

1 Shrimant s/o Malharrao Choudhari,
Age : Major, Occupation : Service,
R/o Jeba Pimpri,
Taluka and District Beed.

2 Education Officer (Secondary),
Zilla Parishad, Beed.

3 Hon'ble Presiding Officer,
School Tribunal at Aurangabad.

4 Shri Laxman s/o C. Bangar,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.

...RESPONDENTS

**WITH
CIVIL APPLICATION NO.7912 OF 2017
IN**

WRIT PETITION NO.3174 OF 1999

Shrimant Malharrao Choudhari

VERSUS

Gurumaharaj Shikshan Prasarak Mandal, Chousala.

**WITH
WRIT PETITION NO.1579 OF 1999**

- 1 Gurumaharaj Shikshan Prasarak Mandal,
Chousala, Taluka and District Beed.
Through its Secretary.
- 2 Guru Datta Kanya Prashala Chousala,
Taluka and District Beed.
Through its Headmaster.

...PETITIONERS

-VERSUS-

- 1 Shri Javed Anis Mujawar,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.
- 2 Education Officer (Secondary),
Zilla Parishad, Beed.
- 3 Hon'ble Presiding Officer,
School Tribunal at Aurangabad.
- 4 Smt.Jaimala w/o Tukaram Sabane,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.

...RESPONDENTS

**WITH
CIVIL APPLICATION NO.8895 OF 2017
IN
WRIT PETITION NO.:1579 OF 1999**

Javed Anis Mujawar
VERSUS
Gurumaharaj Shikshan Prasarak Mandal And Others.

**WITH
WRIT PETITION NO.1580 OF 1999**

- 1 Gurumaharaj Shikshan Prasarak Mandal,
Chousala, Taluka and District Beed.
Through its Secretary.
- 2 Guru Datta Kanya Prashala Chousala,
Taluka and District Beed.
Through its Headmaster.

...PETITIONERS

-VERSUS-

- 1 Balu s/o Abasaheb Jadhav,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.
- 2 Education Officer (Secondary),
Zilla Parishad, Beed.
- 3 Hon'ble Presiding Officer,
School Tribunal at Aurangabad.
- 4 Jayashri w/o Shripati Hadole,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.

...RESPONDENTS

WITH
CIVIL APPLICATION NO.8896 OF 2017
IN
WRIT PETITION NO.1580 OF 1999
Balu Abasaheb Jadhav
VERSUS
Gurumaharaj Shikshan Prasarak Mandal And Others.

WITH
WRIT PETITION NO.:1581 OF 1999

- 1 Gurumaharaj Shikshan Prasarak Mandal,
Chousala, Taluka and District Beed.

Through its Secretary.

- 2 Guru Datta Kanya Prashala Chousala,
Taluka and District Beed.
Through its Headmaster.

...PETITIONERS

-VERSUS-

- 1 Narayan s/o Digambar Jadhav,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.
- 2 Education Officer (Secondary),
Zilla Parishad, Beed.
- 3 Hon'ble Presiding Officer,
School Tribunal at Aurangabad.
- 4 Nanda d/o J. Mundhe,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.

...RESPONDENTS

WITH
CIVIL APPLICATION NO.1349 OF 2000
IN
WRIT PETITION NO.1581 OF 1999
Gurumaharaj Shikshan Prasarak Mandal And another.
VERSUS
Narayan Digamber Jadhav and others.

WITH
CIVIL APPLICATION NO.8897 OF 2017
IN
WRIT PETITION NO.1581 OF 1999
Narayan Digamber Jadhav
VERSUS
Guru Maharaj Shikshan Prasarak Mandal and others.

**WITH
WRIT PETITION NO.1585 OF 1999**

- 1 Gurumaharaj Shikshan Prasarak Mandal,
Chousala, Taluka and District Beed.
Through its Secretary.
- 2 Guru Datta Kanya Prashala Chousala,
Taluka and District Beed.
Through its Headmaster.

...PETITIONERS

-VERSUS-

- 1 Navnath s/o Raosaheb Autade,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.
- 2 Education Officer (Secondary),
Zilla Parishad, Beed.
- 3 Hon'ble Presiding Officer,
School Tribunal at Aurangabad.
- 4 Suhas R. Pawar,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.

...RESPONDENTS

**WITH
CIVIL APPLICATION NO.8899 OF 2017
IN**

WRIT PETITION NO.1585 OF 1999

Navnath Raosaheb Autade

VERSUS

Gurumaharaj Shikshan Prasarak Mandal and Others.

**WITH
WRIT PETITION NO.1591 OF 1999**

- 1 Gurumaharaj Shikshan Prasarak Mandal,
Chousala, Taluka and District Beed.
Through its Secretary.
- 2 Guru Datta Kanya Prashala Chousala,
Taluka and District Beed.
Through its Headmaster.

...PETITIONERS

-VERSUS-

- 1 Dnyanoba Pandurang Limkar,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.
- 2 Education Officer (Secondary),
Zilla Parishad, Beed.
- 3 Hon'ble Presiding Officer,
School Tribunal at Aurangabad.
- 4 Madhukar Bhaurao Lahane,
Age : Major, Occupation : Service,
R/o Chousala,
Taluka and District Beed.

...RESPONDENTS

**WITH
CIVIL APPLICATION NO.8898 OF 2017
IN
WRIT PETITION NO.1591 OF 1999
Dnyanoba Panurang Limkar
VERSUS**

Guru Maharaj Shikshan Prasarak Mandal and Others.

...

Advocate for Petitioners : Mrs.M.A.Kulkarni.

AGP for Respondents/ State : Shri S.N.Kendre.

Advocate for Respondent 1 in all petitions : Shri V.J.Dhage.

Advocate for Respondent 4 in WP/1591/199 : Shri C.V.Thombre.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st September, 2017

Oral Judgment :

1 In all these Writ Petitions filed by the Management, the judgments and orders of the School Tribunal dated 30.11.1998 in Appeal Nos.172/1996, 167/1996, 168/1996, 171/1996, 170/1996 and 169/1996, respectively, filed by Respondent No.1/ original Appellants/ Employees, have been challenged. The School Tribunal has delivered the impugned judgments setting aside the terminations of Respondent No.1/original Appellants. They have been granted reinstatement with continuity and full backwages.

2 In all these matters, while admitting these petitions, this Court has stayed the impugned orders only to the extent of the direction to pay full backwages. It is informed that the Management has immediately reinstated all the Appellants and they are in employment for almost 19 years post reinstatement.

3 Considering the above, since the School Tribunal has concluded that the terminations of these Appellants were illegal and since this Court refused to stay the said direction and conclusion leading to the reinstatement of the Appellants and keeping in view that they have now settled in employment after reinstatement for more than 19 years, I am

not considering these petitions to the extent of the challenge to the orders of reinstatement.

4 Insofar as the direction of the School Tribunal to grant 100% backwages to the Appellants is concerned, I have heard the learned Advocates for the respective sides at length.

5 It is undisputed that after the Appellants were terminated by the Management, new employees were temporarily recruited in their places and the Management has paid salaries of such newly appointed employees.

6 Shri Dhage, learned Advocate appearing for the original Appellants/ Employees, clarifies that newly appointed employees were paid their monthly salaries from January, 1998 to May, 1998. The said salaries were paid through the salary grants by the State after the Management submitted their salary bills for those months.

7 It is stated that newly appointed employees have also filed Writ Petition Nos.1564/1999, 1568/1999, 1569/1999 and 1590/1999 before this Court. Barring Writ Petition No.1590/1999, rest of the petitions have been dismissed in default.

8 Mrs.Kulkarni, learned Advocate for the Petitioner/ Management, submits that no backwages were required to be granted to the employees as they have neither pleaded nor proved that they are not in employment.

9 Shri Dhage submits that four Appellants were in the teaching staff and two were in the non-teaching staff. After their termination, they have pursued the litigation and as a consequence of which, they did not acquire alternate employment elsewhere.

10 In the light of the judgment delivered by the Honourable Supreme Court in the matter of *J.K. Synthetics Limited vs. K.P.Agrawal*, **2007(2) SCC 433**, an employee is required to prove that he has made every attempt to secure an alternate employment post termination. It is equally settled that the Management has to prove that the terminated employee is in gainful employment.

11 In the instant case, neither the Appellants have brought any material on record before the School Tribunal that they had attempted to secure alternate employment and had failed, nor did the Management bring any material on record to establish that these Appellants were in gainful employment and deserve to be deprived of the backwages.

12 In the peculiar facts as above where both sides have failed in establishing their cause insofar as the backwages are concerned, I deem it proper to modify the direction of backwages granted by the School Tribunal, which is payment of 100% backwages. It also needs to be kept in focus that once the termination of the employee is held to be unsustainable and illegal, a right to backwages will have to be considered.

13 Taking into account the peculiar facts as above, these Writ

Petitions are partly allowed only to the extent of modifying the direction of payment of full backwages. The Petitioner/ Management shall, therefore, pay 50% backwages computed on the gross monthly salary of the original Appellants/ Employees/ Respondent No.1 herein for the period of their unemployment. The said amount shall be paid by the Management to the Appellants within a period of EIGHT WEEKS from today, failing which the said amount shall attract interest at the rate of 6% per annum from the date of the judgment of the School Tribunal which is 30.11.1998 till the backwages are actually paid.

14 Rule is made partly absolute in the above terms.

15 All the pending Civil Applications are also disposed of.

kps

(RAVINDRA V. GHUGE, J.)